A TEXAS-SIZED DISASTER:
LESSONS FROM THE PRIMARY ELECTION TO CARRY INTO NOVEMBER

BY LOUIS BEDFORD AND FAITH CASTILLO
SEPTEMBER 2020
# TABLE OF CONTENTS

1 ABOUT THE TEXAS CIVIL RIGHTS PROJECT

2 INTRODUCTION

4 IMPACT OF ELECTION ADMINISTRATION FAILURES

6 PATTERNS AND INCIDENTS

11 SOLUTIONS AND RECOMMENDATIONS

15 CONCLUSION

16 APPENDIX A

19 APPENDIX B

25 ENDNOTES
We are Texas Lawyers for Texas Communities; the Texas Civil Rights Project believes in a state where everyone can live with dignity, justice, and without fear. In its twenty-eight year history, TCRP has brought thousands of strategic lawsuits and spearheaded advocacy to protect and expand voting rights, challenge injustices in our broken criminal justice system, and advance racial and economic justice for historically marginalized communities. TCRP’s Voting Rights Program tackles the systemic issues that suppress democratic participation in Texas — from voter registration to the moment when an individual casts their ballot. Through litigation and advocacy, TCRP fights to turn the tide on the state’s abysmal voting rights record by removing barriers to voter registration, supporting grassroots voter mobilization efforts, and opposing new attempts to suppress voting.

About the Authors

Louis Bedford is an Election Protection Legal Fellow and a native of Dallas, Texas. He went to New York University majoring in Sports Management as he studied the intersection between sports, education, and law. Upon graduating from New York University, Louis attended the University of Texas School of Law where he fostered his love for Civil and Human Rights. Over the course of his career, he has worked in various civil rights fields from Education Equity to Voting Rights and has developed a legislative background after working with the Texas State Senate and in the House of Representatives. He has also worked as a policy analyst for a community-based child welfare member association agency in the state of Illinois.

Faith Nicole Castillo is an Election Protection Legal Fellow for the Texas Civil Rights Project. She graduated with a Bachelor of Arts in Communication from St. Edward’s University specializing in political and rhetorical communication. After, she attended SMU Dedman School of Law where she worked with the Buried Alive Project helping dismantle myths surrounding incarceration, crime, and punishment. However, throughout the years, Faith has worked with several legal clinics and nonprofit organizations to engage with communities and find creative solutions, both in and outside of law. Finally, although Faith has lived all over Texas, she was born and raised in the Rio Grande Valley - the birthplace of her passion for social justice.
The Texas Election Protection Coalition includes dozens of nonpartisan organizations working together to ensure that every eligible voter in Texas can cast a ballot that is fairly and accurately counted. Via phone calls to the national 866-OUR-VOTE voter protection hotline, reports from hundreds of volunteer poll monitors across the state, and posts from voters on social media, we work to empower voters with the information they need to vote and help them to overcome problems that arise during the voting process. Thousands of voters come to us every year with questions they have about voting and issues they encounter when exercising this most fundamental right.

Our work gives rise to a data set available nowhere else—drawn from the actual experiences of thousands of voters across Texas as they attempt to vote—which in turn provides a unique window into the current state of elections in Texas. After every election, we analyze that data and publish a report outlining our findings in order to spur election officials to make necessary reforms, to highlight for voting rights activists the areas where their advocacy is most urgently needed, and to empower the public with the information they need to hold the government accountable for how it administers elections.

Our previous reports on the 2016 and 2018 elections documented a growing series of election failures affecting hundreds of thousands of Texas voters. As this report on the March 2020 Primary details more fully below, that downward trend not only continued, but accelerated so substantially that it nearly overwhelmed the election. Texas reaped the rotten fruit of the willful and selective neglect of the state’s voting infrastructure: polling sites that opened hours late or not at all, broken voting machines and ballot-printers, crashed election websites, too many untrained poll workers, and voters’ names missing from the registration rolls. After years of allowing its election systems to atrophy, Texas’s elections teetered on the brink of collapse on March 3. And that was before Texas began to experience the full wrath of COVID-19 which, as of this date, has infected more than 700,000 Texans.

Describing all of the hurdles voters faced this March would take many more pages than this report covers, and time is short between now and November’s General Election. Instead, this report will focus on the three largest issues voters faced during the March Primary according to the data we collected: long lines at polling places, voters unable to obtain and cast the regular ballot they were entitled to, and a lack of access to information about the process of voting. These troubling trends were reinforced by data collected in the July Democratic and Republican Party Runoff, which featured numerous polling places that closed abruptly or opened late (a leading cause of long lines), a myriad of issues with Texas’ restrictive and archaic vote-by-mail system, and — again — a failure of state officials to educate voters about how to vote safely in this time of COVID-19.

Because of chronic underinvestment in our election infrastructure, plus downright suppression, Texas routinely disenfranchises thousands of voters in normal times. The pandemic has made existing problems more visible and more damaging. Urgent action is necessary to adopt the reforms set forth in this report, particularly as voter turnout in the fall’s general election might be higher than at any point in the last century. If the State continues to refuse to fortify our election infrastructure, Texas voters, community groups, and local election officials must work together to fill this leadership void.
Again, the time to act is now. We hope this report can serve as a blueprint for election officials, activists, and members of the public to address what has gone wrong in Texas democracy. As James Baldwin once said, “Not everything that is faced can be changed, but nothing can be changed until it is faced.”

**This report focuses on the March 3, 2020 Texas Primary Election.** Since then, Texas held a runoff election on July 14 for those races where no candidate received over 50% of the vote and for a special election to a vacant state senate seat. Runoff elections have notoriously low turnout.

Even though we saw a spike in voters participating in this year’s runoff, especially in certain counties, our data set was reduced due to the smaller scale of this election and did not show breakdowns on the scale that occurred during the March Primary Election. But, troubling trends were still evident. Challenges surrounding the vote-by-mail process and with polling place closures due to poll worker shortages are described below.
The Texas Election Protection Coalition receives questions from voters and learns about issues affecting voting through two main channels. First, the national, non-partisan Election Protection Coalition takes in calls from voters via a toll free hotline, 866-OUR-VOTE, answering questions voters have about voting and helping them overcome whatever hurdles they encounter while voting. The Texas Election Protection Coalition works closely with our national partners to resolve every call we receive from Texas voters.

Second, we deploy hundreds of grassroots volunteers to polling places across the state to observe voting conditions and directly speak with voters about voting. Election Protection volunteers are trained to answer the most common questions voters have (such as what form of ID they need to use and whether they can receive assistance while voting) and to escalate systemic issues to our command center of volunteer lawyers.

This report combines data largely from these two sources, along with a much smaller subset of reports we receive through other means, including direct reports from partner organizations and social media.

During the March Primary Election, the Coalition received 2,421 reports across nearly every aspect of the voting process, a clear sign that systemic failures continued to burden Texans in the voting booth. For instance, Harris County distributed voting machines without regard to the actual need at each polling place, resulting in a wildly different experience for voters depending on which location they happened to go to: some Houstonians voted within minutes while others waited in line for hours. Dallas County’s communication systems could not keep up with demand from voters seeking information about voting and poll workers seeking help with issues at their polling locations. In Bexar County, poll workers acted and spoke inappropriately toward voters. And, as this overview of the data shows, voting reports were not confined to any one part of the state:

<table>
<thead>
<tr>
<th>Tickets by Source</th>
<th>Number of Tickets</th>
</tr>
</thead>
<tbody>
<tr>
<td>866-OUR-VOTE Hotline</td>
<td>727</td>
</tr>
<tr>
<td>Poll Monitors</td>
<td>1,694</td>
</tr>
<tr>
<td>Total</td>
<td>2,421</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>County</th>
<th>Number of Tickets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bexar</td>
<td>81</td>
</tr>
<tr>
<td>Tarrant</td>
<td>83</td>
</tr>
<tr>
<td>Travis</td>
<td>102</td>
</tr>
<tr>
<td>Dallas</td>
<td>105</td>
</tr>
<tr>
<td>Harris</td>
<td>139</td>
</tr>
</tbody>
</table>

*Figure 1: Number of Tickets Handled by the Texas Election Protection Coalition*
In the field, the Coalition's Poll Monitor Volunteer Program deployed 345 volunteers to 305 polling locations across 33 counties during the March Primary Election. Volunteers were trained to answer voters’ questions on five specific topics: Voter ID, Voter Registration, Voting Locations, Voting Assistance, and Electioneering. Whether helping voters by looking up their registration, providing information about assistance from poll workers that they are entitled to while voting, or connecting voters directly with a volunteer attorney when the law is being violated, Poll Monitors across the State served as voters’ first line of defense. In total, Poll Monitors helped resolve 1,694 voting rights reports.

The national, non-partisan Election Protection Coalition also took calls from Texans via the 866-OUR-VOTE Election Protection Hotline. In total, there were 727 phone calls from Texans, with 170 calls during Early Voting and 493 on Election Day. These reports spanned 68 counties, with the most calls coming from Harris, Dallas, Travis, Tarrant, and Bexar Counties.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Number of Tickets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political Apparel/Electioneering</td>
<td>82</td>
</tr>
<tr>
<td>Registration Lookup &amp; Provisional Ballots</td>
<td>197</td>
</tr>
<tr>
<td>Assistance with Voting</td>
<td>199</td>
</tr>
<tr>
<td>Voter ID</td>
<td>262</td>
</tr>
<tr>
<td>Where to Vote &amp; Precinct Questions</td>
<td>954</td>
</tr>
</tbody>
</table>

**Figure 2: Poll Monitors**

The Coalition’s Poll Monitor Volunteer Program deployed 345 volunteers to 305 polling locations across 33 counties during the March Primary Election. In total, Poll Monitors helped resolve 1,694 voting rights reports.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Number of Tickets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poll Worker Misinformation</td>
<td>53</td>
</tr>
<tr>
<td>Intimidation / Challenges</td>
<td>85</td>
</tr>
<tr>
<td>Long Lines</td>
<td>&gt; 122</td>
</tr>
<tr>
<td>Ballot Issues</td>
<td>162</td>
</tr>
<tr>
<td>General Information</td>
<td>263</td>
</tr>
</tbody>
</table>

**Figure 3: Hotline Calls**

In total, there were 727 phone calls from Texans, with 170 calls during Early Voting and 493 on Election Day. These reports spanned 68 counties.
The Coalition documented breakdowns across nearly every aspect of the voting process during the March Primary: polling places failing to open on time, “voters finding that their names had been wrongly omitted from the voter registration rolls, voting machines malfunctioning, and chaos unfolding as the polls closed at the end of the day. There is no doubt that Texas needs a massive overhaul when it comes to voting rights issues.

A closer look at the Primary Election reveals long-standing problems that Texas voters have faced time and time again. Three major issues topped all others during the Primary Election: long lines, confusion regarding ballots, and lack of information.

**Long Lines**

For many, the enduring image of the Texas March Primary will be the long lines snaking hundreds of feet outside of polling places, trapping thousands of voters in place late into the night just to cast a ballot. As chronicled by numerous press reports, in some areas wait times lasted as long as seven hours — particularly in communities of color and on college campuses. As documented in our two prior Election Protection reports, Texas has long been notorious for holding voters in line for hours in order to cast their ballot, and this Primary Election was no exception. But as the reports to the Coalition for the March Primary show, the long lines that voters faced worsened dramatically in this election: at least 122 voters in eleven counties reported long lines at polling locations ranging from twenty minutes to five hours. Those counties included some of the state’s major population centers in North and Central Texas and along the Gulf Coast: Bexar, Collin, Denton, Dallas, Freestone, Fort Bend, Harris, Hays, Tarrant, Travis, and Williamson Counties.

Beyond the statistics, the reports themselves paint a harrowing portrait of voters waiting an unreasonable amount of time at polling sites:

- A woman with disabilities was unable to vote in Travis County because the line was over an hour long.
- Voters in Harris County were left without water, chairs, or A/C, endangering elderly voters in particular, with one voter nearly fainting while waiting in line. At this same location, an elderly voter went to go get water after waiting in line for hours and was not permitted back in line because it was after 7 p.m.
- A mom in Harris County had to wait over 5 hours in line with her adolescent son to cast her ballot at midnight.
Long wait times are not merely an inconvenience to voters, but a direct threat to their right to vote, particularly for communities of color as well as communities living at or below the poverty line. Most Texans simply cannot afford to stand in line for hours, and if they do, it means additional sacrifice. Time that is spent waiting in line means less work pay, more child care, and/or higher transportation costs. Texas's long wait times force people to make an impossible choice between work and family on the one hand, and exercising one of our most fundamental rights on the other.

Furthermore, the causes of long lines are nothing new, but arise from breakdowns in the voting process that occur during every election: voting machine malfunctions, poll workers who are not trained well enough on how to check in voters and operate the voting machines, too few poll workers to operate polling places, lack of adequate communication channels between polling places and the county’s main election office, and polling places that aren't ready to open at 7 AM on Election Day. By now, election officials can, if they so choose, anticipate these problems and take steps to prevent them. The fact that long lines are now nonetheless an endemic feature of Texas elections demonstrates a level of neglect by election officials that can only be described as willful. Further, when wait times routinely last hours in one election cycle after another, it sends a clear message to voters that government officials don’t consider their voice important or their right to vote a priority.

The fact that Texas was plagued with such long lines during a relatively low turnout election like the March Primary Election bodes ominously for what voters may encounter during the November General Election, when turnout will be substantially higher. Roughly a quarter of registered Texans voted this March, but voter turnout in presidential elections in Texas are normally above 40%. But this November, there will likely be far more registered voters in Texas than ever, combined with voter turnout that may be higher than anything seen in this country in generations. If Texas cannot handle even low voter turnout without long lines lasting for hours, there is little hope it will be able to handle the potential surge in November.

Roughly a quarter of registered Texans voted this March, but voter turnout in presidential elections in Texas are normally above 40%.

Relatedly, this November will be the first presidential election in Texas without straight ticket voting, which will likely require voters to spend more time casting their ballots and thereby lengthen wait times. Furthermore, the need to social distance and sanitize voting equipment will also potentially add to wait times.

Although we did not receive reports of long lines being a systemic problem in the July Primary Runoff Election, turnout for the Democratic Party's statewide runoff for U.S. Senate was double the turnout for that same party's gubernatorial runoff in 2018. To the extent this elevated turnout foreshadows that turnout will be historically high in November despite the pandemic, it makes urgent planning for dealing with long lines all the greater in the General Election.
Ballots

A second major area where voters had to overcome hurdles put up by the state concerned the confusing nature of ballots. Ballot problems included access to the ballot box, ballot issues, ballot errors, information about ballots or candidates, problems related to the physical process of voting, or issues with provisional ballots. From this issue area, nearly 25% of voters who called the hotline experienced problems concerning their ballot, with one-third of those voters calling specifically about mail-in ballots. And as the second largest issue area during the March Primary, it’s clear that counties need to take action.

Even without a pandemic in the mix, Texas already falls below any adequate standard when it comes to sending voters information on how to get a ballot by mail, the deadline to apply, or mailing out ballots by mail at all. In particular, we received reports of many voters either never having received their mail in ballots or receiving them too late to vote.

In total, Texans across 21 counties reported issues regarding mail in ballots. Some of the stories we received from Texans trying to vote after their government failed to timely provide them a mail in ballot include:

- A college student who attends university outside of Texas, but considers San Antonio his place of residence, received his ballot in the mail at 8:30 p.m. Eastern Standard Time in New York City on the day of the March Primary — well after the 7:00 p.m. Central Standard Time postmark requirement.
- A truck driver was in El Paso being treated for cancer and did not receive her requested absentee ballot from Kaufman County. The voter was ultimately unable to vote as she could not make it physically back to her county with enough time to vote.

Again, all of these issues are likely to be exacerbated if voter turnout and voter registration surge to historic levels this fall. Moreover, more voters than ever are likely to choose to vote by mail in November as a safer option than voting in person during the pandemic, thereby straining the state’s vote by mail system past the breaking point.

Texas’s vote by mail system showed signs of severe strain during the July Primary Runoff as use of vote by mail surged. We received reports of mail in ballots being returned to voters because of a problem scanning barcodes on the return envelopes correctly. We also received reports from Wichita County of voters receiving mail in ballots with labels misidentifying the “excuse” voters had for voting by mail. Voters also had trouble accessing emergency ballots after having been infected by COVID-19, necessitating emergency litigation on the day of the election. And finally, we received numerous reports of voters not receiving their mail in ballots in time to return them before the election. Given that the number of people voting by mail this November will be substantially higher, the need to bolster Texas’s vote by mail infrastructure to handle what may be a vote-by-mail tsunami is clear.
Lack of General Information

The Secretary of State and county election officials have a duty to provide voting and election information to Texans in a way that is easily accessible. It is a basic responsibility of government officials to empower voters with the information they need to exercise their fundamental rights. But during this March Primary, election officials’ failure to adequately provide such information proved to be the biggest single issue documented by the Coalition. About 36% of voters who contacted the Coalition asked for basic information including, but not limited to, where to vote, if countywide polling applied to their county, voter registration, voter ID requirements, spoiling a ballot, how to vote when a candidate has dropped out of the race, absentee ballot information, if Texas was an open primary, what materials could be taken into a booth, and information about many other aspects of the primary process.

About 36% of voters who contacted the Coalition asked for basic information including:

- where to vote
- if countywide polling applied to their county
- voter registration
- voter ID requirements
- spoiling a ballot
- absentee ballot information
- what materials could be taken into a booth

Websites, including those of the Texas Secretary of State and Bell, Dallas, Harris, Hays, and Travis Counties, malfunctioned or crashed at some point throughout Election Day, leaving voters stranded without answers to basic questions about where to vote or what they were voting on. Furthermore, this lack of information contributed to voters not understanding the Primary process, and in particular the difference between a joint and regular primary. In counties operating a joint primary, the political parties work together to share voting machines and otherwise jointly run the election at polling places. To most voters, what are in reality two separate elections (one for the Republican Party’s nominees and another for the Democratic Party’s nominees) appear and feel to voters as if they are participating in just one seamless election and voting experience. This setup is intuitive to voters because it mimics how voting works during a general election.

In contrast, counties running a regular primary can seem to voters wildly different than any other election they have voted in. In a regular primary, the political parties do not share resources or voting machines, and voters are separated into different lines depending on which party’s primary they wish to participate in. Even when operated well, this setup can cause voters to be confused about what is happening because of how much it deviates from the normal election experience. Voters were concerned as to why they were separated out into different lines, confused as to why they couldn’t vote on the machines used for the other party, and expressed discomfort at having to publicly announce the party they were voting for.
In Texas, primaries are a joint effort: the state, the county, and the two major political parties must work together to select polling places, staff polling places, and communicate information to voters. Neither the state, nor the counties, nor the parties educated voters sufficiently on the primary process.

Last minute polling place closures for the July Primary Runoff Election resulting from a shortage of poll workers, including in Bexar and Tarrant Counties, were an ominous sign for November.14 Alarmingly, Bexar County announced the closure of three polling places only the day before the election, leaving voters little time to hear of the change and make alternate plans.15 Because poll workers in Texas are often older voters most at risk to serious illness and death from COVID-19, it is reasonable to assume there will be severe poll worker shortages this fall unless urgent, aggressive action is taken by counties to recruit from a larger and more diverse pool of workers.
The need for urgent action is clear. If nothing is done, the problems noted above will only surge under the dramatically expanded voter turnout expected this fall, threatening to cause the state’s election system to crash during one of the most important elections in our history. Since the conclusion of the March 2020 Primary, the Texas Civil Rights Project and other grassroots organizations have worked to propose new policies and recommendations for counties and the state government. Our efforts have included providing policy recommendations to county and state election officials, meeting with county officials about the issues documented in this report and undertaking lawsuits to expand vote-by-mail access in the state of Texas.

This Section will briefly summarize some of the activism that members of the Coalition have undertaken—both in and out of the courts—to ensure November’s election is ready for both historic turnout and COVID-19. And it will lay out a set of steps that state and local governments need to take to ensure that every eligible Texan can safely cast a ballot that is fairly and accurately counted this November.

**Vote by Mail Litigation**

On March 17, 2020, the Texas Civil Rights Project and 25 other grassroots organizations sent the Secretary of State a letter requesting that she immediately advise county election officials that all eligible voters in the state can vote by mail in the upcoming primary runoff elections. In Texas, voters are only eligible to receive a vote-by-mail ballot if they fall under at least one of the following four limited categories: 1) they have a disability, defined under the code as “a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter’s health”\(^\text{16}\); 2) they expect to be absent from the county during the voting period\(^\text{17}\); 3) they are 65 years or older at the time of the election\(^\text{18}\); or 4) they are confined in jail but otherwise eligible.\(^\text{19}\)

We contended that the definition of disability in the Texas Election Code applies to every voter without immunity to COVID-19 given the likelihood of serious injury or even death from exposure to the virus, thereby entitling all such voters to choose to vote by mail. When the Secretary failed to respond, we sued for injunctive relief ordering the Secretary to make it clear to county election officials that they must accept vote by mail applications from voters who do not have immunity to COVID-19.

During our vote-by-mail litigation, Texas District Judge Tim Sulak issued a temporary injunction against Travis County and the State of Texas stating that registered voters may request a mail-in ballot under the disability option.\(^\text{20}\) The judge stated that “while the virus that causes COVID-19 is still in general circulation” without a vaccine or herd immunity, all voters meet the definition of “disability” under law, because no one can go to the polls in person without a likelihood of injuring their health.\(^\text{21}\)

The Texas Supreme Court ultimately disagreed, however, ruling in a related case that merely having a lack of immunity to COVID-19 without other underlying physical conditions does not make an individual eligible to vote by mail.\(^\text{22}\) But, the Supreme Court further stated that “a voter can take into consideration aspects of his health and his health history that are physical conditions in deciding whether, under the circumstances, to apply to vote by mail because of disability.”\(^\text{23}\)

The end result of this legal maneuvering is that Texans must now judge for themselves whether they are eligible to vote by mail during the pandemic, rather than receiving clear guidance and support from state leaders. At the
same time, the Texas Attorney General has engaged in a campaign to intimidate voters from exercising their right to vote by mail by threatening criminal prosecutions against groups that would help people vote by mail during the pandemic, and by implication against the voters themselves.24

**Secretary of State Advocacy**

Immediately after the March Primary, TCRP alerted Texas Secretary of State Ruth Hughs about the widespread voter suppression we documented during the election (a copy of the letter is attached as Exhibit A).25 We pointed out that “[w]hat should have been a fast and straightforward process turned into a nightmare for hundreds of thousands of people across Texas.”26 Further, “the burden on voting rights was not equally shared by all Texans. Instead—and as Texas has seen over and over—the brunt of the burden was borne by communities of color, young people and people with disabilities.”27

As an initial next step, we requested that she immediately work with county officials to hold a series of community town halls no later than the end of April 2020 to hear directly from voters about their experiences trying to vote, and to lay out a plan to avert a similar scenario in November.28 We also suggested the creation of a state-wide commission composed of grassroots community leaders, members from the major political parties, and voting rights experts, with a mandate to investigate the reasons for these breakdowns and to hold public hearings soliciting testimony from Texans affected by them.29

In the weeks that followed, and the COVID-19 pandemic swept over the state, TCRP and over 30 other civil rights organizations wrote to Secretary Hughs again urging her to take immediate action in light of the pandemic to ensure that all eligible voters can safely cast a ballot in the remaining elections set to take place in 2020 (a copy of this letter is attached as Exhibit B).30 We outlined a series of critical steps to protect our elections during this public health emergency, including helping counties offer expanded vote by mail and track status of mail ballots, making sure that polling places are relocated away from high risk populations and provided with sufficient protective supplies, and assisting with poll worker training and recruitment.

In response, on April 6, 2020, the Secretary of State issued an advisory with the purpose of “[assisting] election officials in facilitating voting for individuals that may be affected by COVID-19, and in preparing for the conduct of elections in the context of this public health issue.”31 Additionally, the Secretary of State’s office released additional guidance on health protocols for voters.32 This was to create “minimum recommended health protocols for all voters in Texas,” although the Secretary also made sure to note that “[c]ounty election officers may adopt additional protocols consistent with their specific needs and circumstances to help protect the health and safety of all voters, office personnel, polling place workers, and poll watchers.”33 Just before early voting began for the Primary Runoff, the Secretary released a new, more detailed advisory on how counties should conduct in-person voting safely during the pandemic.34

Separately, Governor Abbott issued an Executive Order35 encouraging counties to move their May 2 elections, and used his emergency powers to delay the May 26 primary runoff elections to July 14 and to expand early voting for the primary runoff with an additional advisory from the Texas Secretary of State.36 At the end of July, the Governor similarly ordered that early voting for the general election be expanded to start six days earlier than normal (on October 13).37
County Level Advocacy

While the Secretary of State holds ultimate responsibility over the state’s elections, it is Texas counties who must actually plan and implement elections for their voters. After the March Primary Elections, the Texas Civil Rights Project reached out to the 11 counties where the most voting rights issues were reported during the March 3 Democratic and Republican Primary Elections. The three counties where voters reported the most election failures in the state of Texas were also three of the largest: Harris County, Dallas County, and Travis County. These three counties accounted for roughly 48% of the reported Election Protection issues in March.

In those letters, our office pointed out specific election administration failures such as ballot issues, faulty machines, long lines, and inaccessible election administrators on Election Day, and as the COVID-19 pandemic gained steam, we added advocacy regarding steps that counties should take to keep voters and poll workers safe from the virus. Since those letters were sent out, our office has actively worked to build on current relationships and connect with counties to ensure that they are listening to community members and making changes to the electoral system to provide an equitable voting rights structure.

State and County Recommendations

The Secretary and county election officials must act quickly. As the state’s chief elections officer, the Secretary has an affirmative duty under state law to ensure uniform operation of elections throughout the state, and to assist and advise counties in running elections. She can mobilize the state’s resources to meet both the pre-existing, chronic challenges in Texas elections, and the newer scourge of COVID-19, if she chooses to do so. County election officials are the ones working day in and day out to help voters cast their ballots. They must work together to conduct this election in the midst of historic challenges.

In 2019, TCRP, MOVE Texas, and the Texas Freedom Network successfully launched a reforms campaign, Democracy from the Ground Up, in an effort to advance pro voter reforms. These reforms include expanding participation in elections while making the process easier and more accessible - especially for black and brown voters. As part of the next phase of those efforts, we have proposed a number of steps that election officials should adopt to ensure that Texans can vote safely this fall, including:

- Modify county elections websites to display a statement recommended by our coalition that clearly explains to voters about eligibility to vote by mail during the pandemic, as well as the link to apply for
a mail-in ballot with deadline dates clearly posted;

- Mail postage-paid vote-by-mail applications to all voters 65 or older;
- Institute a tracking system for vote-by-mail applications and ballots so individuals can check the status of their materials;
- Do not reduce the number of polling places below the number used in 2016 (while ensuring to properly adjust their number to account for population growth in the intervening years);
- Gain community input about planned locations of polling places. Counties must re-locate polling places away from high risk populations (such as nursing homes and senior citizen centers) and select polling places that enable COVID-19 preventative measures (such as sufficient social distancing among voters, election workers, and members of the public);
- Announce planned polling locations at least one month in advance;
- Boost curbside voting so that eligible voters can be processed as they drive up to designated areas without them having to go inside to request curbside voting (as required by current law);
- Take measures recommended by CDC to protect poll workers, including securing Personal Protective Equipment (PPE), encouraging voters to wear masks including through a posted sign, marking out social distance spacing for voters waiting in line, and making sure polling places have supplies to ensure public safety, including hand sanitizer and materials for safe ballot marking;
- Work to recruit high school and college students to participate in local Student Poll Worker Programs to supplement an anticipated decline in poll worker availability;
- Bolster poll worker trainings so that the workers are ready to handle any issue that may arise and are fully proficient in the County’s election technology;
- Regularly update the County Elections website and ensure that information displayed there is accurate at all times, including without limitation voter registration tools, polling place locators, and any feature that estimates wait times at polling places;
- Verify all polling locations in the County comply with the Americans with Disabilities Act;
- Implement a plan for screening election workers before they come on duty for COVID symptoms; and
- Instruct poll workers that no electioneering on PPE is allowed.

The money is available to make sure that voting is conducted safely. In addition to the funding that counties and the Secretary of State already have earmarked for elections, Congress this spring passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, a $400 million emergency funding bill to help states prepare their elections for the COVID-19 pandemic. These funds must be used to help counties increase precautions for those who choose to vote in person, as well as bolstering counties’ mail-in ballot operations. Officials must further incorporate CDC recommendations into their election planning to further create a more equitable and just voting system.39

By implementing these steps, election officials can help ensure that the upcoming elections are free, fair, and safe.
These are not ordinary times. Even before 2020, Texas was already undergoing a profound transition, with a growing population becoming more diverse and more urban. Texas’s antiquated election systems could not keep up with these changes even in “normal” times, as this report’s data on the March 3 Primary Election show.

But since March, the threat to Texas elections has become even more acute. The COVID-19 pandemic has imposed a set of unique challenges to election administration not seen in generations. Further, wild charges of “voter fraud” and “rigged” elections by national leadership have undermined public confidence in the electoral system. The nation’s economic downturn has created an unexpected hit to the finances of state and local governments, which now must make hard choices about resource priorities.

The state and local governments in Texas must work with civic engagement groups to ensure that all eligible voters get to cast a ballot that counts and stop voter disenfranchisement before it happens. Because we know that voting issues do not affect all voters equally, young people, people of color, and various communities across Texas who are perpetually disenfranchised are counting on all of us to ensure they can participate in our country’s democracy. There is a lot of work to do—and time is running short.
March 5, 2020

The Honorable Ruth R. Hughes
Texas Secretary of State
P.O. Box 12887
Austin, TX 78711

Dear Secretary Hughs,

As President of the Texas Civil Rights Project,1 I write today to express our alarm over the widespread voter suppression our organization documented across the State of Texas during the March 3, 2020 Primary Elections. We demand that you and other relevant stakeholders take immediate action to invest in voting infrastructure and prevent a similar disaster from unfolding in November. Specifically, and as outlined below, we ask that you immediately: work with county officials most affected by Tuesday's problems to hold a series of community town halls no later than the end of April 2020; and create a state-wide commission to investigate exactly what happened and suggest immediate reforms.

On Tuesday, Texas reaped the rotten fruit of willful, selective neglect of voting infrastructure. The breakdowns in our election system have occurred in one election cycle after another, have been allowed to fester for many years, and now threaten to overwhelm the November General Election, given the record-high turnout anticipated. The State of Texas must recognize Tuesday as the alarm that it was.

On Tuesday, millions of Texans—many of them first-time voters—went to their local polling places excited to exercise their rights by casting a ballot in our primary elections. What should have been a fast and straightforward process turned into a nightmare for hundreds of thousands of people across Texas. Even worse, the burden on voting rights was not equally shared by all Texans. Instead—and as Texas has seen over and over—the brunt of the burden was borne by communities of color, young people and people with disabilities.

From the time polls opened to when they closed, voters faced a series of obstacles: polling sites that opened hours late or not at all; broken voting machines and ballot-printers; crashed election websites; too many untrained poll workers; and voters’ names missing from the registration rolls. Then, especially later in the day, many voters in our major cities faced absurdly long wait times due to an inadequate number of polling locations, a lack of operational machines per location, and the

---

1 We are Texas Lawyers for Texas Communities; the Texas Civil Rights Project believes in a state where everyone can live with dignity, justice, and without fear. In our thirty-year history, TCRP has brought thousands of strategic lawsuits and spearheaded advocacy to protect and expand voting rights, challenge injustices in our broken criminal justice system, and advance racial and economic justice for historically marginalized communities.
failure to properly staff each location. As chronicled by numerous press reports, wait times lasted as long as seven hours at points, particularly in communities of color and on college campuses.\footnote{See, e.g., William Cummings, “I wasn’t going to let anything stop me”: Texas Voter Waits Six Hours to Vote on Super Tuesday, USA Today (Mar. 4, 2020), https://www.usatoday.com/story/news/politics/elections/2020/03/04/super-tuesday-texas-man-waits-six-hours-vote/4952084002/.
}

Tuesday’s election meltdown was, sadly, entirely foreseeable. For years, the State of Texas has allowed its voting infrastructure to atrophy through willful and selective neglect. As documented in a series of reports, Texas voters have faced this same set of problems over and over in recent years, yet our State’s leadership has failed to do anything about it.\footnote{See, e.g., Beth Stevens et al., Texas Election Protection 2016: An Overview of the Challenges Faced by Texas Voters in the Presidential Election (2017), https://texascivilrightsproject.org/wp-content/uploads/2018/09/EP-Report.pdf; Beth Stevens & Emily Eby, Texas Election Protection 2018: How Election Administration Issues Impacted Hundreds of Thousands of Voters (2019), https://texascivilrightsproject.org/wp-content/uploads/2019/03/2019-Election-Protection-Report.pdf.} We have now reached a crisis point: widespread voter suppression in the State of Texas, as more and more voters are severely burdened in their exercise of the franchise or disenfranchised altogether, especially people of color, young people and people with disabilities.

Those with responsibility over our State’s elections—you, county officials, the State’s political parties—must unite and get to work immediately to rebuild the trust of Texas voters. The stakes could not be higher. We are now less than eight months from what could be the highest turnout in a General Election in over a century. We must all come together immediately to ensure that nothing like this happens again, in particular during the November General Election.

To begin this process, we ask that you immediately:

- Work with county officials most affected by Tuesday’s problems (Bexar, Dallas, Harris, Hays, Tarrant and Travis counties, and others as appropriate) to hold a series of community town halls no later than the end of April 2020 to hear directly from voters about their experiences trying to vote, and lay out your plan to avert a similar scenario in November.

- Create a state-wide commission comprised of grassroots community leaders, members from the major political parties, and voting rights experts, with a mandate to investigate the reasons for the breakdowns that occurred during the March 2020 Primary Election and to hold public hearings soliciting testimony from Texans affected by them. Such a body would:
  1) propose state-wide interim steps that can and must be implemented by the relevant state or local officials well before the November 2020 General Election; and
  2) issue a report in advance of the 2021 Texas Legislative Session with recommendations to modernize Texas’s election systems.

As Tuesday’s debacle makes clear, Texas’s elections are in need of root and branch reform from top to bottom. Voting is not a privilege that the State of Texas can provide to voters with varying degrees of quality, but a fundamental right at the heart of our democracy that must be equally
accessible to every eligible person. If we all work together after this latest wake-up call, we can strive to ensure that no Texan ever again—including this November—has to struggle to cast a ballot.

We look forward to hearing your response to these proposals, and to your plan to prevent similar issues from arising this November.

Very Truly Yours,

Mimi Marziani
President
Texas Civil Rights Project

cc: Keith Ingram
    Director of Elections
    Via email: kingram@sos.texas.gov

    Adam Bitter
    General Counsel
    Via email: abitter@sos.texas.gov

    Jacque Callanen
    Bexar County Elections Administrator
    Via email: jcallanen@bexar.org

    Toni Pippins-Poole
    Dallas County Elections Administrator
    Via email: Toni.Pippins-Poole@dallascounty.org

    Diane Trautman
    Harris County Clerk
    Via email: county.clerk@cco.hctx.net

    Jennifer Anderson
    Hays County Elections Administrator
    Via email: elections@co.hays.tx.us

    Heider Garcia
    Tarrant County Elections Administrator
    Via email: HIGarcia@tarrantcounty.com

    Dana DeBeauvoir
    Travis County Clerk
    Via email: dana.debeauvoir@traviscountytx.gov
March 30, 2020

The Honorable Ruth Hughes                     Via email: secretary@sos.texas.gov
Secretary of State                             
P.O. Box 12887                                  Austin, TX  78711

Dear Secretary Hughes,

We are civil rights organizations that work directly with voters across this state and advocate
for a free and fair democracy in Texas. We write to insist you take immediate action in light of the
COVID-19 pandemic to ensure all eligible voters can safely cast a ballot in the upcoming May 2nd
local elections,1 July 14th primary runoff elections, and November 3rd general elections. As the
pandemic has dramatically altered the lives of Texans across the state, you have been shockingly
silent. Instead of acting quickly to help clarify voters’ rights and counties’ duties, you have provided
nothing -- no guidance to voters or to counties on how to conduct upcoming elections. Indeed,
despite calls from the community and the repeated advice of experts,2 you have refused to take even
the most obvious first step that is fully within your power: issuing advisory guidance instructing
counties to allow all eligible voters to vote by mail during this crisis. As the State’s Chief Elections
Officer, you have a responsibility to mobilize all of the state’s election infrastructure to confront this
emergency. Your failure to lead on responding to the pandemic is endangering the fundamental
right to vote of all Texans, and will inevitably lead to litigation against you and county election
officials as Texas voters seek to vindicate their rights under state and federal law. Accordingly, you
must take action now before the pandemic overwhelms the upcoming elections.

There is every reason to believe this pandemic will continue in some form for months to
come. According to public health experts, there will likely be subsequent outbreaks -- including
possibly during periods of in-person voting -- requiring measures like social distancing, frequent
sanitization of surfaces and hands, and shielding of high-risk populations from infections.3 It is your
affirmative duty under state law to ensure uniform operation of elections throughout the state, and
to assist and advise counties in running elections.4 Texas voters need your proactive, determined
leadership, and you must treat this as an urgent priority requiring a mobilization akin to wartime.
Specifically, we urge you to issue the following guidance:

---

1 Some localities -- for instance the City of Waco -- are not delaying their May 2nd elections. See, e.g., City of Waco planning to hold May 2 election, KXXV.com (Mar. 26, 2020), https://www.kxxv.com/hometown/mclennan-county/city-of-waco-planning-to-hold-may-2-election.
• **Hold a safe Primary Runoff Election:** The Primary Runoff Election cannot be delayed past July 14th, and counties need to be fully prepared to conduct elections under any circumstances existing at that time.

• **Make vote by mail available to all Texans:** Issue advisory guidance instructing counties to allow all eligible voters to vote by mail in all upcoming elections during this crisis. A national bipartisan group of experts have identified this as a necessary first step to an adequate COVID-19 response, and there is a clear path under current state law.

• **Help counties offer expanded vote by mail and track status of mail ballots:** Provide best practices to counties to operate a larger-than-normal vote by mail program, and use your statutory authority to assist counties by using any available funds to institute a central system to keep track of the processing of applications, mailing of ballots, and return of ballots. You should also use any available funds (including from the recent stimulus package passed by Congress and any available Help America Vote Act (HAVA) funds) to pay for voters’ postage.

• **Help counties select safe polling places:** Provide best practices and other necessary support to assist counties in relocating polling places away from high risk populations (such as nursing homes and senior citizen centers) and selecting polling places that enable COVID-19 preventative measures (such as sufficient social distancing among voters, election workers, and members of the public).

• **Boost curbside voting:** Issue advisory guidance that counties must comply with the curbside voting law as it relates to a pandemic and accommodate an increased demand for curbside voting. All polling places should be equipped to process voters as they drive up to designated areas without them having to go inside to request curbside voting. Accommodations need to be made to ensure that poll workers have sufficient cover from the elements and any necessary resources to prevent heat exposure if they need to process voters outside a building.

---

5 National Taskforce Guide, supra n.2 at 4, https://tinyurl.com/vebck3h.
7 Tex. Elec. Code § 31.004(a) (“The secretary of state shall assist and advise all election authorities with regard to the application, operation, and interpretation of this code and of the election laws outside this code.”).
8 Every election cycle there are countless complaints from voters who never receive their properly requested mail ballots, receive the ballots too late to return them, or whose mail ballots arrive to the county late or not all due to postal error. See, e.g., Diane Smith & Anna M. Tinsley, Waiting for a mail-in ballot from Tarrant County? You’re not alone. Here’s Why, Fort Worth Star-Telegram (Oct. 29, 2018), https://www.star-telegram.com/news/politics-government/election/article220789875.html. Counties and their third-party vendors have time and again shown they are not up to the task of properly coordinating and tracking numerous mail ballot requests.
9 Similar to the vote-by-mail language, the Election Code currently allows voters to have ballots delivered to them curbside “[i]f a voter is physically unable to enter the polling place without personal assistance or likelihood of injuring the voter’s health.” Tex. Elec. Code § 64.009(a).
• **Make sure polling places have sufficient protective supplies to ensure public safety:** That includes sanitizer, gloves, approved face masks, and disinfectant spray. You must provide guidance to election officials on how to use these supplies effectively.

• **Assist counties with recruiting and training a sufficient pool of poll workers:** Provide best practices on how to staff positions. This includes guidance on hiring backup election workers to fill in for election workers who do not show up, and how to protect election workers who face a higher risk of suffering significant injury or even death from contracting COVID-19.

• **Make sure that every vote cast by mail is accurately and fairly counted:** Provide detailed guidance for all Early Voting Ballot Board and Signature Verification Committee members on how to verify signatures on mail-in ballots. Recommend a uniform notice and cure process that requires election officials to provide meaningful notice of a rejected mail-in ballot (by mail as well as by phone and/or email if such information is provided on a voter's Application for Ballot by Mail or Federal Post Card Application), and a simple verification procedure to cure the rejected mail-in ballot that can be completed by the voter in-person, by mail, over the phone, or through email or fax.

• **Provide guidelines for continuing to ensure voter registration services throughout the pandemic:** County registrars have been providing unclear guidelines to individuals inquiring about voter registration, and some have even indicated that they may not be processing registration applications. You must instruct counties to have at least one staff member regularly collect registration cards and process them in a timely manner. Further, you must immediately come into compliance with the National Voter Registration Act as it relates to online driver's license transactions.

The federal government has just passed the largest stimulus package in history, and specifically set aside “$400,000,000, to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle.” The stimulus explicitly requires States to report how it uses the funds to respond to the coronavirus. Your office must ensure these funds are put to their intended use in ways that actually serve the needs of Texas voters during this crisis. Furthermore, it appears that Texas has yet to apply for an additional $26 million tranche of HAVA funds that it could and should use to respond to this crisis. We formulated the above-outlined guidelines based on our direct relationship with Texas voters and the knowledge and recommendations of national experts. We urge you to use stimulus and HAVA funds to help counties comply with these necessary guidelines, and any further guidance from the National Task Force on Election Crises and the Election Assistance Commission.

---

The health, safety, and voting rights of all Texans, regardless of ideological preference, are at issue. Decisions taken (or not taken) today will have an outsized impact on voters later on -- time is of the essence. Now is the time to reverse course and show that you are committed to ensuring free and fair elections for all Texans during the pandemic by taking the steps outlined above.

Sincerely,

Thomas Buser-Clancy, Senior Attorney
ACLU Foundation of Texas, Inc.

Margaret Fung
Asian American Legal Defense and Education Fund (AALDEF)

Austin Justice Coalition

Sarah Ortiz Shields
Austin Tech Alliance

Melissa Marschall
Center for Local Elections in America, Rice University

Patrick Bresette
Children's Defense Fund

Dennis Borel
Coalition of Texans with Disabilities

Andrea Reyes
Deeds not Words

Emgage Action

John Sherman
Fair Elections Center

TeQuila Chatmon
Home and Healing

Frances Valdez
Houston in Action

Brigid Hall
Jolt Action
Robert Elkin
March to the Polls

Angelica Razo
Mi Familia Vota Education Fund

H. Drew Galloway
MOVE Texas Action Fund

Leah Aden
NAACP Legal Defense and Education Fund, Inc.

Will Francis, LMSW
National Association of Social Workers - Texas Chapter

Deborah Chen
OCA-Greater Houston

Dyana Limon-Mercado
Planned Parenthood Texas Votes

Progress Texas

Jamila Benkato
Protect Democracy

Rick Levy
Texas AFL-CIO

Beth Stevens
Texas Civil Rights Project

Carroll G. Robinson, Esq.
Texas Coalition of Black Democrats

Laura Yeager
Texas Educators Vote

Kathy Miller
Texas Freedom Network

Hany Khalil
Texas Gulf Coast Area Labor Federation, AFL-CIO
Crystal Zermeno  
Texas Organizing Project  

Rabbi David Segal  
Texas Religious Action Center for Reform Judaism  

Anthony Elmo  
UFCW Local 1000  

Cristina Jimenez, Executive Director  
United We Dream Texas  

cc: Texas County Election Officials Via email  
Keith Ingram Via email: kingram@sos.texas.gov  
Director of Elections  
Adam Bitter Via email: abitter@sos.texas.gov  
General Counsel
When this report refers to “the Coalition,” that is a reference to the Texas Election Protection Coalition.

64 reports did not indicate whether they occurred during Early Voting or Election Day.


See Emily Eby & Beth Stevens, supra note 4.

See id.


For instance, the number of registered voters for the March Primary Election was 14% higher than for the same primary election four years earlier. See Anna M. Tinsley, A Record Number of Texans Are Registered for the March 3 Primary, Fort Worth Star-Telegram (Feb. 19, 2020, 4:55 PM) https://www.star-telegram.com/news/politics-government/article240398731.html. One estimate suggests that voter turnout in 2020 may be the highest since 1908. See Ronald Brownstein, Brace for a Voter-Turnout Tsunami, Atlantic (June 13, 2019) https://www.theatlantic.com/politics/archive/2019/06/2020-election-voter-turnout-could-be-record-breaking/591607/.

See Matthew Watkins, Nearly 1 Million People Voted in Tuesday’s Democratic Runoff. The Party Says It’s a Sign of Strength to Come in November, Tex Trib. (July 15, 2020, 7:00 PM), https://www.texastribune.org/2020/07/15/texas-democrats-primary-runoff-turnout/.


Tex. Elec. Code Ann. § 82.002(a)
17  Id. § 82.001
18  Id. § 82.003
19  Id. § 82.004
21  Id. at *4.
23  Id. at *22.
26  Id. at *1.
27  Id.
28  Id. at *2.
29  Id.
32  Ruth R. Hughes, Health Protocols for Voters,
33  Texas Secretary of State https://www.sos.state.tx.us/elections/forms/health-protocols-for-voters.pdf.
34  Id. at *4.
37  Id. at *4.
39  The Texas Civil Rights Project Voting Rights Program reached out to 11 additional counties to try to develop and create relationships with the various Elections Administrators and County Clerks: Montgomery County, Fort Bend County, Hays County, Tarrant County, Denton County, Collin County, El Paso County, Travis County, Dallas County, Harris County, and Bexar County.